



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes RR, PSF, LRE, LAT, OLC

Introduction

On December 16, 2022, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) for an order for the Landlord to provide services or facilities required by the tenancy agreement or the *Act*, for a rent reduction for repairs, services or facilities agreed upon but not provided, for an order to suspend or set conditions on the landlord's right to enter the rental unit, for an authorization to change the locks to the rental unit, and for an order for the Landlord to comply with the *Act*. The matter was set for a conference call.

The Tenant as well as the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter – *Related Issues and Time Issues*

I have reviewed the Tenant's application, and I note that they have applied for several issues related to the provision of services and facilities as well as two other unrelated issues. I find that these other issues are not related to the Tenant's request for the provision of services and facilities. As these other matters do not relate directly to the provision of services and facilities for the rental unit, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, and at the conclusion of the hearing that I am dismissing with leave to reapply the Tenant's claim for an order to suspend or set conditions on the landlord's right to enter the rental unit, and for an authorization to change the locks to the rental unit.

Additionally, this hearing was scheduled for one hour, and at minute 56 the parties were advised that there was insufficient time to hear further testimony. The Tenant became insistent that they be allowed additional time to provide further testimony on the severed issues noted above. The Tenant's phone line had to be muted at minute 57 of these proceedings in order to allow for the delivery of end-of-hearing instructions to both parties. At minute 57:37 the Tenants phonenumber disconnected from these proceedings.

This decision will include my determination on the Tenant's claims related to the request for the provision of services and facilities, a rent reduction for services or facilities agreed upon but not provided and an order to comply with the *Act*.

Issues to be Decided

- Should the Landlord be ordered to provide services or facilities required by the tenancy agreement or the *Act*?
- Is the Tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?
- Should the Landlord be ordered to comply with the *Act*?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on September 15, 2022, that rent in the amount of \$1,200.00 is to be paid by the first day of each month and the

Landlord collected a \$600.00 security deposit. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Tenant testified that on October 25, 2022, they messaged the Landlord to advise them that the heat in their rental unit was not working and requested that it be repaired. The Tenant submitted that the Landlord and their repair person attended the rental unit several times between late October to December and that the heat was never repaired properly. The Tenant submitted 15 text messages, five videos, and two letters into documentary evidence.

The Tenant submitted that the heat finally started working in mid-December 2022 but that it still does not work properly as it makes strange noises. The Tenant testified that due to the noise they are using space heaters to heat their rental unit, which is an additional cost to themselves, as the space heaters are powered by electricity, which they pay for under their tenancy agreement. The Tenant submitted that the Landlord should be ordered to repair the heating system, so it does not make strange noises and that they are entitled to a rent reduction going back to late October 2022, for the Landlord not providing a service, the heat, as agreed to in the tenancy agreement.

The Landlord submitted that the heating system in the rental unit works fine and that the service has always been provided to the Tenant, as agreed to in the tenancy agreement. The Landlord testified that when the Tenant advised them that the heat in the rental unit was not working properly in October 2022, and that they arranged for a plumber to attend the rental unit, as the heating system for the rental property is a "boiler system." The Landlord testified that the plumber reported that there were no problems with the heating equipment in the rental unit.

The Landlord submitted that the problem with the heat in the rental unit was caused by a lack of power to the valve that controls the hot water flow into the rental unit. The Landlord submitted that the hot water hearing valve requires electricity to function and that the Tenant's refusal to set up the electrical account in their own name, as required under the tenancy agreement, lead to the electrical company turning off the power to the rental unit, which causes the hot water hearing valve to close. The Landlord referenced section four of the tenancy agreement already in evidence for these proceedings.

The Landlord submitted that the Tenant has now opened an electrical account in their name, as required under the tenancy agreement, and that the hot water hearing valve is now getting power and the heat is working properly in the rental unit. The Landlord also

submitted that there was never anything wrong with the heating system provided in the rental unit, that the service had always been there for the Tenant to use, but that it was through the neglect of the Tenant to set up their electrical account that causes the heat to not function in the rental unit. The Landlord submitted that they have provided all the services or facilities contracted to in the tenancy agreement or required by the *Act* and that the Tenant is not entitled to a rent reduction for service not provided.

The Tenant testified that when they took over occupation of the rental unit in September 2022, the electricity was on in the rental unit and that it was on and available for their use without having to be in their name until late October 2022, when it was suddenly turned off.

The Landlord submitted that the electrical is never turned off to a rental unit when it is unoccupied and that the electrical company only turns off the power to the unit after a few weeks of a new tenant not setting up their account. The Landlord submitted that the electrical company sent a notice to the Tenant advising that the Tenant needed to set up their account, but that the Tenant ignored this notice from the electrical company, which resulted in their power being turned off and the hot water heating valve closing. The Landlord submitted two text messages into documentary evidence.

Both the Landlord and the Tenant request that the rights to access and the restrictions on access to the rental unit of a landlord during a tenancy be reviewed during the hearing.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities I find that:

I accept the agreed-upon testimony of these parties that the Tenant submitted a request to have repairs to the heating system in the rental unit completed, on October 25, 2022. I also accept the agreed-upon testimony of these parties that the Landlord did attend the rental unit with a plumber to inspect the heating system after receiving the Tenant's request.

However, during the hearing, the parties to this dispute provided conflicting verbal testimony regarding the condition of the heating system in the rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide

sufficient evidence over and above their testimony to establish their claim, in this case, that is the Tenant, as the Tenant is the applicant in these proceedings.

I have reviewed all of the Tenant's documentary and digital evidence submitted to these proceedings, and I find that there is insufficient evidence before me to show that there is or was a need to repair the heating system in the rental unit or that the Landlord had failed to provide a working heating system during this tenancy. Consequently, I must dismiss the Tenant's request for an order to provide services or facilities required by the tenancy agreement or the *Act*, and their claim for a rent reduction for repairs, services or facilities agreed upon but not provided.

Finally, during the hearing, the Tenant requested that section 29 of the *Act* be reviewed with both parties and recorded in the decision for these proceedings.

Section 29 of the *Act* states the following regarding a landlord's right to access the rental unit during a tenancy:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Both parties were reminded that a landlord may only access a rental unit if written notice is issued that states a reasonable purpose for the entry and indicates a reasonable time window for entry.

Both parties are advised that pursuant to section 90 of the *Act* written Notice must be served in an approved method, that allows for service timelines to be observed.

The *Act* recognizes six methods of service, detailed below:

1. Served personally;
 - a. deemed received immediately and allows for access 24hrs later.
2. Served by attaching to the front door;
 - a. deemed received on the third day after it is attached and allows for access on the fourth day.
3. Served by leaving a copy in a mailbox or mail slot;
 - a. deemed received on the third day after it is left and allows for access on the fourth day.
4. Served by fax;
 - a. deemed received on the third day after it is faxed and allows for access on the fourth day.
5. Served by mail;
 - a. deemed received on the fifth day after it is mailed and allows for access on the sixth day.
6. Served by Email,
 - a. deemed received on the third day after it is emailed and allows for access on the fourth day. **This method may only be used if there is a written agreement for email service.**

The Landlord and Tenant are advised that under-the-door and text messages are **not** recognized methods of services under the *Act*.

Additionally, both parties were reminded that a tenant may not prevent a landlord from accessing a rental unit if proper written notice has been served to the tenant, and that a tenant may ask but cannot demand that a landlord only access a rental unit when they are at home or available to attend during the landlord's access.

Conclusion

I dismiss the Tenant's application for an order for the Landlord to provide services or facilities required by the tenancy agreement or the *Act*, and for a rent reduction for repairs, services or facilities agreed upon but not provided.

I order the Landlord and the Tenant to comply with sections 29 and 90 of the *Act*, regarding access to the rental unit and the service of documents.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 17, 2023

Residential Tenancy Branch